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No. 85-758

# In the Supreme Court of the United States

OCTOBER TERM, 1985

CITY OF PRIOR LAKE, MINNESOTA, PETITIONER

*v.*

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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## QUESTION PRESENTED

Whether the annexation by the City of Prior Lake of lands within the Shakopee Mdewakanton Sioux Community was invalid under either federal law or Minnesota law.

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A16) is reported at 771 F.2d 1153. The memorandum order of the district court (Pet. App. A18-A35) is not reported.

### JURISDICTION

The judgment of the court of appeals was entered on August 30, 1985, and the petition for a writ of certiorari was filed on November 1, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### STATEMENT

1. a. This action was filed in the United States District Court for the District of Minnesota on August 17, 1983, by the Shakopee Mdewakanton Sioux Community and one of its members. They challenged: (i) the establishment by the City of Prior Lake, Minnesota of election precincts that

excluded the Shakopee Mdewakanton Sioux Indian Reservation, and (ii) the City's refusal to provide municipal services to reservation residents on the same basis as they were furnished to other residents of the City. Plaintiffs alleged that these actions violated 42 U.S.C. 1971(a)(1), 1971(a)(2)(A) and Section 2(a) of the Voting Rights Act of 1965, 42 U.S.C. 1973(a); the Fourteenth Amendment to the United States Constitution; 42 U.S.C. 1983; and the Indian Reorganization Act of 1934, 25 U.S.C. 465 (Pet. App. A19). The United States subsequently was permitted to intervene as a plaintiff. The City filed a counterclaim for a declaratory judgment that, if residents of the Reservation are citizens of Prior Lake, they are subject to all laws, ordinances and regulations of the City and all state and federal laws (*id.* at A20).[1]

b. The case was submitted to the district court on stipulated facts, which were adopted and incorporated into the court's memorandum order (Pet. App. A21). The stipulation and exhibits thereto (*id.* at A36-A74) established the following facts:

In 1972, the City of Prior Lake annexed the southern portion of Eagle Creek Township pursuant to the Minnesota annexation statute, Minn. Stat. Ann. § 414.031 (West Supp. 1985) (Pet. App. A39-A40).[2] The 1972 decision of the

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[1]On September 23, 1983, the district court entered a preliminary injunction barring the City from implementing a city council resolution excluding the Reservation from the City's election precincts and from preventing otherwise eligible Indian residents of the Reservation from participating in municipal elections (Pet. App. A20). The court declined to enter preliminary injunctive relief requiring the City to provide municipal services to the Reservation on the same basis as it furnished such services elsewhere, since there was no evidence that the City intended to cease furnishing fire and rescue services pursuant to an existing contract (*ibid.*; *id.* at A60-A62); see pages 3-4, *infra*.

[2]The northern portion of Eagle Creek Township was annexed to the City of Shakopee, and the Township thereafter ceased to exist as a governmental unit (Pet. App. A39-A40).

Minnesota Municipal Commission on the City's annexation petition describes by metes and bounds the portions of Eagle Creek Township that were annexed to Prior Lake (*id.* at A40), and it specifically refers to the "north line of [the] Indian reservation" as forming part of the northern boundary of the expanded Village (now City) of Prior Lake (*id.* at A46). A map that, according to the City's stipulation, "correctly illustrates the current boundaries of the City and the Shakopee Mdewakanton Sioux Reservation" also shows the northern boundary of the City as including the Reservation (*id.* at A40, A59).

The lands comprising the Reservation were purchased by the United States in 1890 and 1891, and title has been held in trust by the United States for the Community since that time (Pet. App. A38-A39). In 1924, by virtue of 8 U.S.C. 1401, the members of the Community became citizens of the United States (Pet. App. A39). Eligible voters living on the Reservation apparently voted in Prior Lake municipal elections between 1972 and 1983 (*id.* at A3).[3] On July 18, 1983, the city council passed Resolution No. 83-18, redrawing the City's election precincts; "Precinct No. 2 was drawn explicitly excluding the land of the Shakopee Mdewakanton Sioux Community Reservation, which would otherwise lie within the exterior boundaries of this voting precinct" (Pet. App. A40-A41). Except as provided by the district court's orders, residents of the Reservation are denied municipal citizenship by the City (*id.* at A41). As a result, those residents receive no municipal services other than those provided pursuant to a contract between the City and the private firm that manages the tribal bingo operation on the

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[3]The City did not so stipulate. However, the district court stated in its September 23, 1984 order granting preliminary injunctive relief (at 5), that it was not disputed that the Reservation was included in the election precinct boundaries prior to July 18, 1983 and that reservation residents in fact voted in past municipal elections.

Reservation (*id.* at A40). Under the terms of that contract, the City receives $12,500 per year for fire and rescue services (*id.* at A60-A62).

2. The district court found that the reservation lands were within the boundaries of Eagle Creek Township at the time of the 1972 annexation and that, by virtue of the annexation, those lands became a part of the City of Prior Lake and reservation residents became citizens of the City (Pet. App. A23).[4] The court rejected the City's argument that the reservation lands were sovereign enclaves within Eagle Creek Township that were not part of the annexation, reasoning that "[t]his fiction of a state within a state has been expressly rejected" by this Court's decisions in *Howard* v. *Commissioners,* 344 U.S. 624, 626-627 (1953), and *Evans* v. *Cornman,* 398 U.S. 419 (1970) (Pet. App. A23-A24).

The district court also rejected the City's argument that the annexation was invalid under state law because the reservation lands were not capable of being subjected to city government. The district court concluded that there is no requirement under Minnesota law that the Reservation be subject to local or state regulatory authority in order to be eligible for annexation (Pet. App. A25-A27). The district court likewise found no federal impediment to the annexation. It held that federal lands, such as the reservation lands at issue here, may be annexed pursuant to state law, and that such an annexation does not interfere with the "plenary

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[4]Congress has declared all persons born in the United States to a member of an Indian tribe to be citizens of the United States. 8 U.S.C. 1401(b). State citizenship is derivative of national citizenship. Indians who are citizens of the United States therefore are also citizens of the State. *Goodluck* v. *Apache County,* 417 F.Supp. 13, 14-15 (D. Ariz. 1975), aff'd, 429 U.S. 876 (1976). See *Slaughter-House Cases,* 83 U.S. (16 Wall.) 36, 112 (1873).

and exclusive power of the federal government to deal with the Reservation and its residents" (*id.* at A27-A31).

3. The court of appeals affirmed (Pet. App. A1-A16). Like the district court, the court of appeals held that the annexation of the reservation lands was proper under state law (*id.* at A7-A8). The court also rejected the City's argument that tribal consent was necessary in order to include the Reservation within the annexed territory. Relying on this Court's decision in *Three Affiliated Tribes* v. *Wold Engineering*, No. 82-629 (May 29, 1984), the court held that whatever jurisdiction Minnesota acquired in 1953, pursuant to Public Law 280,[5] to apply civil laws of general applicability to Indian country was not divested by the 1968 amendments to Public Law 280,[6] which require all subsequent assertions of jurisdiction to be preceded by tribal consent (Pet. App. A8-A10). In addition, the court concluded that the City was incorrect in any event in equating annexation with an increase in civil jurisdiction over the reservation (*id.* at A10). Because the annexation did nothing more than change the boundaries of the City, so that the Reservation thenceforth was within Prior Lake rather than Eagle Creek Township, the court concluded that annexation neither " 'frustrates nor interferes with tribal self-government,' " nor " 'impairs a right granted or reserved by federal law' " (*ibid.*, quoting *Chase* v. *McMasters*, 573 F.2d 1011, 1018 (8th Cir.), cert. denied, 439 U.S. 965 (1978)). The court therefore held that the annexation was not barred by federal law and that residents of the Reservation were entitled to municipal services in the same manner as other residents of the City. In addition, because annexation did not expand the scope of state regulatory jurisdiction over Indians that was permitted by federal law,

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[5]Act of Aug. 15, 1953, ch. 505, § 4, 67 Stat. 589, 28 U.S.C. 1360.

[6]Pub. L. No. 90-284, § 406, 82 Stat. 80, 25 U.S.C. 1326.

the court of appeals affirmed the district court's dismissal of the City's counterclaim for a declaratory judgment that all municipal ordinances and regulations and state laws are applicable to reservation residents if the Reservation is held to be within the City of Prior Lake (*id.* at A11).

**ARGUMENT**

The court of appeals correctly applied established principles under this Court's decisions addressing the subject of annexation under state law of lands held by the federal government. Its decision does not conflict with any decision of this Court or other courts of appeals. Review by this Court therefore is not warranted.

1. In *Howard* v. *Commissioners*, 344 U.S. 624 (1953), this Court addressed the validity of the annexation by the City of Louisville of federally owned land on which a Naval Ordnance Plant was located. Employees of the plant challenged a tax levied for the privilege of working in the city. After the state court upheld the tax, the employees argued in this Court that the tax should be enjoined because the land on which the plant was located ceased to be a part of the State after it was acquired by the United States and it therefore could not properly have been annexed by the city. In sustaining the tax, this Court stated (344 U.S. at 627):

> [T]he fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the Federal Government. The sovereign rights in this dual relationship are not antagonistic.

Several years later, in *Evans* v. *Cornman*, 398 U.S. 419 (1970), the Court held that a Maryland county denied equal protection of the laws to residents of the federal enclave upon which the National Institutes of Health (NIH) were located by denying them the right to vote. The Court again

rejected the "fiction of a state within a state" (398 U.S. at 421-422) and held that the NIH grounds did not cease to be a part of the State when the federal enclave was created.

The principles just discussed apply to annexations that encompass lands within an Indian Reservation to the same extent as they apply to other lands that are subject to the exclusive jurisdiction of the United States. Federal law imposes no absolute barrier to such boundary changes under state law for purposes of distributing governmental powers and responsibilities that derive from state law. See *Oglala Sioux Tribe* v. *South Dakota,* 770 F.2d 730, 736 (8th Cir. 1985). To be sure, there are recognized limitations on the authority of a State (or its political subdivisions) to exercise taxing or other general regulatory jurisdiction on an Indian reservation—even where, as in Minnesota (see 28 U.S.C. 1360), the State's civil adjudicatory jurisdiction has been extended onto the reservation by Public Law 280. See *Bryan* v. *Itasca County,* 426 U.S. 373 (1976); *Ramah Navajo School Board, Inc.* v. *Bureau of Revenue,* 458 U.S. 832 (1982); *New Mexico* v. *Mescalero Apache Tribe,* 462 U.S. 324 (1983). But a mere change in municipal boundaries does not in itself impermissibly interfere with the jurisdiction of the Tribe or the United States within the reservation or with the Indians' use and occupancy of the reservation. Compare *Howard* v. *Commissioners,* 344 U.S. at 626-627.

After annexation, as before, the pertinent question is whether a particular exercise of regulatory or taxing jurisdiction by the State (or the responsible political subdivision of the State) " 'would interfere with reservation self-government or would impair a right granted or reserved by federal law.' " *Rice* v. *Rehner,* 463 U.S. 713, 718 (1983), quoting *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145,

148 (1973). See, *e.g., Three Affiliated Tribes* v. *Wold Engineering,* No. 82-629 (May 29, 1984), slip op. 8-10. Accordingly, after annexation, the determination whether any given assertion of jurisdiction by the newly responsible political subdivision of the State would impermissibly interfere with tribal self-government or the operation of federal law requires a "particularized inquiry into the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law." *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 145 (1980). As regards the City of Prior Lake and the Reservation involved in this case, that question must be resolved in the future on a case-by-case basis, if and when the City actually asserts jurisdiction over certain on-reservation activities. It cannot be resolved now on the categorical basis the City proposes (see Pet. 8-9), under which there are only two extreme alternatives: either annexation of an Indian reservation makes the full panoply of state and local laws applicable to the Indian reservation and its residents, or there can be no annexation under state law at all. Cf. *Oglala Sioux Tribe* v. *South Dakota,* 770 F.2d at 736. This Court has eschewed such a rigid, all-or-nothing approach to the question of the application of state law on an Indian reservation. See, *e.g., Ramah Navajo School Board,* 458 U.S. at 845-846.

For these reasons, the court of appeals was correct in concluding that the City "mistakenly equates annexation with an increase of civil jurisdiction over the Reservation" (Pet. App. A10).[7] And because annexation under state law

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[7]The City relies (Pet. 7, 9) on the observation in this Court's decision in *Bryan* v. *Itasca County* that tribal governments are disabled under many state laws from incorporating as local units of government. See 426 U.S. at 388 n.14, citing Goldberg, *Public Law 280: The Limits of State Jurisdiction Over Reservation Indians,* 22 U.C.L.A. L. Rev. 535, 581 (1975). Based on this observation, the City argues that annexation

does not in itself expand the scope of state civil jurisdiction over on-reservation affairs that is permitted by federal law, the City's repeated contention (Pet. 7, 9, 10, 11) that annexation is inconsistent with the limited scope of civil jurisdiction conferred by Public Law 280, as construed in *Bryan* v. *Itasca County,* also is erroneous.[8]

2. Petitioner also asserts (Pet. 7-8) that the courts below have approved a kind of annexation for which state law does not provide. However, as both courts below noted (Pet. App. A8, A26-A27), the Municipal Commission of the State of Minnesota approved the annexation in question

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amounts to "forcible incorporation" (Pet. 9) that interferes with tribal self-government. This argument is based on a misapprehension of the impact of the footnote in this Court's opinion upon which it relies. The Court was simply making the point in *Bryan* v. *Itasca County* that if reservation property were subject to state taxation, the inability of tribal governments to incorporate under state law would relegate them to a level below that of counties and municipalities, which would siphon off the primary revenue base. The Court believed that this potentiality reinforced the conclusion that Public Law 280 did not authorize state taxation of Indian property on a reservation. Thus, the opinion in *Bryan* v. *Itasca County* supports our submission that the mere fact that an Indian reservation is situated within the boundaries of a political subdivision—a county in *Bryan* v. *Itasca County,* and a city in this case—does not make that subdivision's laws fully applicable to the reservation.

[8]The City's argument (Pet. 11) that it is unfair to require it to provide municipal services to reservation residents, even though it cannot apply the full range of municipal taxing and regulatory laws to the Reservation, is one that must be directed to Congress rather than to this Court. In *Bryan* v. *Itasca County,* the Court noted that Congress, in enacting Public Law 280, recognized that certain inequities might arise because the special tax-exempt status of Indian lands would prevent those lands from supporting the state courts that would resolve disputes under the jurisdiction newly conferred on the States by Public Law 280. 426 U.S. at 381-383. Nevertheless, Congress determined that enactment of Public Law 280 was necessary in order to "redress the lack of adequate Indian forums for resolving private legal disputes between reservation Indians, and between Indians and other private citizens" (*id.* at 383).

under applicable state law standards, and it referred specifically to the "north line of [the] Indian Reservation" as forming a part of the boundary of the post-annexation City of Prior Lake (*id.* at A53-A54). Petitioner did not seek review of that decision. It is not clear why that state-law determination should now be open to collateral attack in these federal proceedings. In any event, the 1972 determination by the Municipal Commission strongly supports the reasonableness of the district court and court of appeals' conclusion, applying the Minnesota Supreme Court's decision in *State* v. *City of White Bear Lake,* 255 Minn. 28, 95 N.W. 2d 294 (1959), that state law did not impose any impediment to the annexation. See Pet. App. A7-A8. That question of state law does not warrant further review by this Court.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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